

CITY OF SAN JOSÉ, CALIFORNIA  
Redevelopment Agency of the City of San Jose  
50 W. San Fernando Street, Suite 1100  
San José, California 95110

## STAFF REPORT

Hearing Date/Agenda Number  
PC Agenda: 3-10-04 Item: 4.

File Number  
RCP04-006

Application Type  
Conditional Use Permit

Council District  
3

Planning Area  
Downtown Core

Assessor's Parcel Number(s)  
467-46-015, 467-46-014

### PROJECT DESCRIPTION

Completed by: Amie Glaser

Location: 394 South Second Street

Gross Acreage: 0.35

Net Acreage: 0.35

Net Density: n/a

Existing Zoning: CG

Existing Use: Public eating, drinking, and entertainment establishment with hours of operation until 2:00a.m.daily with entertainment and alcohol service ending at 1:30 a.m.

Proposed Zoning: no change

Proposed Use: Public eating, drinking, and entertainment establishment with hour of operation 24-hours a day with entertainment and alcohol service ending at 1:30 a.m.

### GENERAL PLAN

Completed by: AG

Land Use/Transportation Diagram Designation  
Core Area

Project Conformance:  Yes  No  
 See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: AG

North: Commercial and Residential (YMCA Complex)

CG Commercial General

East: Single-family Attached Residential

CG Commercial General

South: Commercial and surface parking

CG Commercial General

West: Surface Parking Lot

CG Commercial General

### ENVIRONMENTAL STATUS

Completed by: AG

Environmental Impact Report found complete April 27, 1999  
 Negative Declaration circulated on

Exempt  
 Environmental Review Incomplete

### FILE HISTORY

Completed by: AG

Annexation Title: Original City

Date: 3-27-1850

HISTORIC STATUS: Not Historic

Completed by: AG

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: AG

**Department of Public Works**

None Received

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**Other Departments and Agencies**

Police Department – Letter Attached

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**GENERAL CORRESPONDENCE**

None Received

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**ANALYSIS AND RECOMMENDATIONS**

**BACKGROUND**

The project site is located at 394 South Second Street. The project site is developed with a single story commercial building. The building is occupied by Palermo restaurant. The project site is located within the CG Commercial General zoning district. A Conditional Use Permit (CUP) is required for late-night operations between midnight and 6:00 a.m. for any use other than office in any commercial zoning district.

Palermo's received a CUP for late-night operations until 2:00 a.m. and entertainment on May 7, 2003 (RCP03-005, attached). Palermo's has been and continues to be in compliance with the Conditions of Approval of their use permit RCP03-005. Staff has not received complaints about current operations at the restaurant.

**Project Description**

The applicant is requesting to be able to operate 24-hour a day, seven days a week. The applicant claim that they will be able to maintain the safety and security of the site and that the 24-hour operations will allow them to increase their revenue while offering their services to the residents of the downtown at late night and early morning hours on the weekends. Entertainment and alcohol service would still be limited to between the hours of 9:00 a.m. and 1:30 a.m.

Separated by one commercial property from Palermo's is the high-density residential YMCA residential project. The subject establishment operates as an eating and drinking establishment with entertainment. An establishment with this mix of uses can tend to generate problems late at night, which can be highly disturbing to area residents. Vandalism, noise violations, and assaults have taken place in the vicinity of Palermo's restaurant. While the business cannot be held fully responsible for patrons that cause disturbances in and around the restaurant, 24-hour operations would allow for patrons to be in the area continuously and could cause an increase the likelihood that disturbances would occur. Therefore increasing the hours of operations would adversely impact existing or planned residential uses. For this reason, staff has determined that the proposed project does not conform with the General Plan.

## **ENVIRONMENTAL REVIEW**

Pursuant to Section 15175 of the 2004 CEQA Guidelines, the City of San Jose has determined that the project will not create new significant environmental impacts beyond those analyzed in the Final Supplemental Environmental Impact Report (SEIR) entitled "Downtown Strategy Plan" certified by City Council Resolution No. 68839 on April 27, 1999.

## **ANALYSIS**

Through the subject CUP, the applicant proposes 24-hour operations, 7 days per week, at the existing Palermo restaurant. Such uses are subject to the City Council's 24-hour Use Policy and the City's Zoning Ordinance. The objective of these policies and ordinances is to ensure that late-night uses are compatible with surrounding land uses. A key provision of these policies is to ensure that entertainment and after-midnight uses not be approved unless the facilities can operate without detriment to nearby residential uses and the general welfare of the surrounding area. The following issues address the project's operational incompatibility within its surroundings.

### **Compliance with City Council 24-hour Use Policy**

Palermo's restaurant currently has limited hours of operation of 9:00a.m. to 2:00a.m., daily. Twenty-four hour operations for restaurants are discussed in the City Council 24-Hour Use Policy. This policy advises that 24-hour operations at sit down restaurants are to be looked at on a case-by-case basis. Because there are residential uses within close proximity to Palermo's, and due to the noise and pedestrian traffic volumes associated with patrons from this establishment, the 24-hour operations are not consistent with

below). The Police Department does not advise 24-hour operations because of the recent history of disturbances in the vicinity of the site which have impacted the general public as well as residences and businesses in the immediate vicinity.

The City of San Jose Police Department does not recommend approval of 24-hour operations for Palermo due to concerns about the proximity of the restaurant to the neighboring residential to the north and east and because of the increased customer draw a 24-hour operation will bring to an already high-crime area of the City (see attached memo). The Police Department does not have officers available to staff the downtown for the hours after 2:00 a.m. to support 24-hour operations at Palermo's. Therefore, because of the potential impacts on the surrounding area, the Police Department recommends maintaining Palermo's current hours of operation and Conditions of Approval.

### **Parking**

The subject site is located in the Downtown Parking Management Zone and its parking requirements are governed by Section 20.90.510 of the Municipal Code. Based on the provisions of Section 20.90.510, parking is not required for public eating, drinking and entertainment establishments, such as Palermo.

### **CONCLUSION**

It is staff's opinion that the proposed 24-hour operations at Palermo's restaurant is inconsistent with the requirements of the General Plan and City Council 24-hour Use Policy. Evidence presented by the Police Department regarding disturbances, etc. in the area suggests that the current hours of operation already impact the area. An increase in the hours would increase patrons in the area, thus, further impact and already impacted area. In addition, the required public health and safety findings to support the use cannot be made, see the findings in the "Recommendation" section of this report.

### **PUBLIC OUTREACH**

A notice of public hearing was distributed to the owners and tenants of all properties located within 500 feet of the subject site.

### **RECOMMENDATION**

Redevelopment Agency Staff recommends the Planning Commission **deny** the requested Conditional Use

3. The site has been used as an eating, drinking and entertainment establishment.
4. A Conditional Use Permit is required for the operation of an eating establishment with after-midnight use in the CG Zoning District.
5. The site is subject to the hours of operation contained in RCP03-005 ; 9:00a.m. through 2:00a.m., daily.
6. The project site is designated Core Area on the San Jose 2020 General Plan Land Use/Transportation Diagram.
7. The Core Area designation provides that restaurants, bars and nightclubs may be located within the downtown Core Area, provided that such uses do not adversely impact existing or planned uses or conflict with other San Jose General Plan objectives. Based on experience at the site, the proposed 24-hour use is likely to impact other sensitive uses in the surrounding area, including residential uses.
8. The environmental impacts of this project were addressed by Final Supplemental EIR entitled, "Downtown Strategy Plan," adopted by City Council Resolution No. 68839 on April 27, 1999.
9. The subject site is surrounded by a variety of commercial and residential uses. Residential uses are located directly adjacent to the project site.
10. The subject site is located in the Downtown Parking Management Zone. Based on the parking provisions for the Downtown Parking Management Zone (Municipal Code, Section 20.90.510), parking is not required for eating, drinking, and entertainment establishments.
11. The project is not consistent with the City Council 24-hour Use Policy, specifically the project is located adjacent to residential uses.
12. The project does not include any exterior changes to the structure.

This Planning Commission concludes and finds, based upon an analysis of the above facts, that:

1. The project does not conform to the San Jose 2020 General Plan in that it proposes the operation of a 24-hour eating establishment within the Downtown Core Area that will adversely impact surrounding uses. The increased hours of operation will negatively impact surrounding businesses

Finally, based upon the above-stated analysis and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location will:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area because the proposed 24-hour use is not consistent with residential and commercial uses of the surrounding area. In addition, the San Jose Police Department feels that 24-hour operations are not appropriate at the proposed location do not support the proposal; and
  - b. Impair the utility or value of property of other persons located in the vicinity of the site because the 24-hour use at the existing eating establishment will alter and diminish the value of adjacent restaurants and businesses, raise new safety concerns, and create impacts because of graffiti, noise, and Police problems; and
  - c. Not be detrimental to public health, safety or general welfare because the potential environmental impacts of the project were addressed by the final supplemental environmental impact report entitled, "Downtown Strategy Plan EIR" (Resolution No. 68839); and
2. The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area because the project site already includes the improvements needed for the proposed uses which are compatible with the uses in the surrounding area; and
3. The proposed site is adequately served by highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities.
4. The proposed site is not adequately served by other public or private service facilities as are required in that the scale of the project will draw needed police resources from other areas that would translate to the need to expand police services to maintain existing levels of coverage.